



F26 *Frye, Daubert, or None of the Above: What Rules Govern Admissibility of Scientific Evidence in Court?*

*Andrea A. Darvas, JD**, King County Superior Court, Maleng Regional Justice Center, 401 Fourth Avenue, N, Kent, WA 98032-4429

The goals of this presentation are to: (1) familiarize attendees with the criteria courts use in state and federal jurisdictions for admissibility of scientific evidence; (2) explore the differences between *Frye*, *Daubert*, and hybrid tests for admissibility; and, (3) explore whether the tests for admissibility are truly different — or if they should be.

Lawyers are frequently faced with the need to present scientific evidence to courts and to juries. Judges are charged with deciding whether such evidence is sufficiently helpful and reliable to be admissible in court. This presentation will impact the forensic science community by helping lawyers, judges, and science professionals to understand the standards various courts use in deciding whether scientific evidence can be presented in court.

After attending this presentation, attendees will understand the criteria that federal courts, as well as courts in the 50 states, apply when deciding whether scientific or technical evidence can be presented in court. Some courts apply the so-called “*Frye*” standard, while the federal courts and many state courts apply the so-called “*Daubert*” standard. Still other jurisdictions apply a hybrid standard. This presentation will explore what these tests for admissibility are, how they differ, and how lawyers and scientists can present information as effectively as possible to maximize the likelihood that the scientific and technical evidence they wish to present in court will be allowed.

The *Frye* test derives from a 1921 case out of the District of Columbia Circuit, where the court refused to admit evidence of polygraph test results, because the court found that the science and reliability of polygraph testing “has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony deduced from the discovery, development, and experiments thus far made.”¹ The line of legal authorities descended from *Frye* have required that the scientific theory underlying the evidence and the technique or methodology used to implement it, must be generally accepted in the scientific community for the evidence to be admissible in court. Some jurisdictions require only the first factor for admissibility; others require both factors to be shown before scientific evidence may be presented in court.

In *Daubert v Merrell Dow Pharmaceuticals, Inc.*, the United States Supreme Court announced a new standard for admissibility of scientific evidence in federal courts.² The test requires a trial judge to analyze several factors before allowing expert testimony on scientific or technical matters: (1) whether a theory or technique can be tested; (2) whether it has been subjected to peer review and publication; (3) the known or potential error rate of the theory or technique; and, (4) whether the theory or technique enjoys general acceptance within the relevant scientific community.

Some jurisdictions have tacked on additional requirements before scientific or technical evidence can be allowed in court.

Hard as it may be to imagine, there is disagreement among courts and among legal commentators as to whether *Frye* or *Daubert* is the more rigorous test for the admissibility of scientific or technical evidence. Regardless, it is important for lawyers and forensic scientists to be familiar with the criteria for admissibility and to be prepared to meet those criteria.



Jurisprudence - 2017

This presentation will include a paper containing a survey of the criteria that courts from all 50 states and the federal courts use in deciding whether scientific and technical testimony will be allowed into evidence. This presentation will also include a discussion concerning how these various criteria can be reconciled or harmonized.

Reference(s):

1. *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).
 2. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).
-

Admissibility, *Daubert*, *Frye*